

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BLACK EMERGENCY RESPONSE
TEAM, et al.,

Plaintiffs,

v.

GENTNER DRUMMOND, in his official capacity as Oklahoma Attorney General, et al.,

Defendants.

Case No. 5:21-CV-1022-G

Hon. Charles B. Goodwin

PLAINTIFFS' NOTICE OF PENDING MOTIONS

Plaintiffs respectfully notify the Court of the following pending motions: (1) Plaintiffs' Motion for Preliminary Injunction (Doc. 27); (2) OU Regents Defendants'¹ pending Motion to Dismiss (Doc. 51); (3) Edmond Public School Defendant's² pending Motion to Dismiss (Doc. 52); and (4) State Defendants'³ Motion for Judgment on the Pleadings (Doc. 106). The first three motions have been fully briefed for over two years. The fourth has been fully briefed for over a year. This Notice follows Plaintiffs' prior attempts to seek a ruling from the Court and the Court's oral argument hearing held on December 4, 2023. Throughout this time, Plaintiffs' rights under the First and Fourteenth Amendments have been violated without relief. In support of this notice, Plaintiffs state the following:

¹ Defendants 19-25.

² Independent School District No. 12, Oklahoma County, Oklahoma.

³ Defendants 1-18.

1. On October 19, 2021, Plaintiffs brought a challenge to House Bill 1775, codified as Okla. Stat. tit. 70, § 24-157 (2021), (H.B. 1775), and its implementing regulations, codified as Okla. Admin. Code § 210:10-1-23, for violations of their constitutional rights (Doc. 1).
2. On October 29, 2021, Plaintiffs filed a Motion for Preliminary Injunction (Doc. 27), which was fully briefed on January 13, 2022 (Doc. 66). This motion has been fully briefed and pending for twenty-seven (27) months.
3. Plaintiffs filed an Amended Complaint on November 9, 2021 (Doc. 50).
4. On November 23, 2021, OU Regents Defendants and Edmond Public School Defendants respectively filed Motions to Dismiss Plaintiffs' Amended Complaint (Doc. 51, 52), which were fully briefed on January 20, 2022 (Docs. 71, 73). These motions have been fully briefed and pending for twenty-seven (27) months.
5. On January 25, 2023, State Defendants filed a Motion for Judgment on the Pleadings (Doc. 106), which was fully briefed on March 3, 2023 (Doc. 112). This motion has been fully briefed and pending for fourteen (14) months.
6. On August 28, 2023, Plaintiffs filed a Motion for Status Conference to discuss the status of the case and pending motions. (Doc. 133).
7. On September 29, 2023, Plaintiffs sought an expedited ruling from this Court with their unopposed Motion for Expedited Consideration. (Doc. 139). That motion requested resolution from this Court on eight pending motions, including the four still-pending motions listed above.

8. On October 12, 2023, this Court granted Plaintiffs' Motion for Status Conference and scheduled it for October 24, 2023. (Doc. 147).
9. After the status conference, this Court subsequently ordered oral arguments concerning Plaintiffs' Motion for Preliminary Injunction that took place on December 4, 2023. (Doc. 157). Oral arguments were robust, including opening and closing statements and extensive opportunities for question-and-answer sessions between the Court and counsel. (Doc. 162).

I. The Lack of Rulings on the Motions Prejudices Plaintiffs

Plaintiffs include students, teachers, and professors at both the K-12 and university level who have endured HB 1775's violations of their First and Fourteenth Amendment rights for three years. Plaintiffs along with other public-school teachers, professors, and students are nearing the end of the 2023-24 academic school year. This is the third year that schools have been forced to operate under the restrictions of H.B. 1775. (Doc. 27-1). With summer school and the fourth consecutive year under HB 1775 on the horizon, the need for clarity on this law remains as great as ever.⁴ See Transcript of Oral Argument at 6, lines 14-15 (discussing the Lieutenant Governor's statement that HB 1775 needs clarification) (Doc. 162). Without this clarity, Oklahoma teachers and professors are obligated to self-censor their instruction, removing lessons related to racism, sexism, and implicit bias for fear of incurring the harsh penalties of the law's implementing

⁴ Allison Herrera, *Oklahoma Lt. Gov. Matt Pinnell: HB 1775 needs to be 'clarified' as spotlight shines on state's history*, KOSU (NPR), (June 20, 2023), <https://www.kosu.org/race-culture/2023-06-20/oklahoma-lt-gov-matt-pinnell-hb-1775-needs-to-be-clarified-as-spotlight-shines-on-states-history>.

regulations. State Defendants continue to investigate school districts and enforce HB 1775 for activities such as training teachers on how to avoid being racially biased against students. (Doc. 83). These actions have put educators on notice that the State will continue to enforce HB 1775 to its fullest extent and educators must tread lightly or face losing their licenses. As a result, Oklahoma students continue to be deprived of access to curricula reflecting diverse perspectives, ideas, and lessons related to a culturally inclusive education, and information that is crucial for building analytical skills and fostering cognitive development. This Court’s decision on Plaintiffs’ Motion for Preliminary Injunction would significantly aid in providing this necessary clarity.

II. Further Delay in Resolving Pending Motions Would Require Plaintiffs to Seek a Writ of Mandamus from the Tenth Circuit

The Tenth Circuit has clarified that if an immediate ruling on pending motions is necessary to protect a party’s interests, “their remedy [is] to seek an expedited ruling from the district court and/or a writ of mandamus from this court.” *UFCW Local 880-Retail Food Empls. Joint Pension Fund v. Newmont Mining Corp.*, 276 F. App’x 747, 749-50 (10th Cir. 2008).

On September 29, 2023, Plaintiffs sought an expedited ruling from this Court with their unopposed Motion for Expedited Consideration. (Doc. 139). This Court denied Plaintiffs’ motion, held a status conference between the parties, and scheduled oral arguments that took place on December 4, 2023. (Docs. 147, 157). Oral argument lasted for more than two hours as the Court asked several questions of counsel for the parties on the critical issues before the Court. During the nearly five months since oral arguments,

this Court has not ruled on the pending motions necessary to grant Plaintiffs relief.

Absent a ruling from this Court on Plaintiffs' Motion for Preliminary Injunction,

Plaintiffs will have only one remaining path to relief: filing a motion for a writ of

mandamus with the Tenth Circuit Court of Appeals.

Therefore, Plaintiffs respectfully notify this Court of their pending Motion for Preliminary Injunction and the need for its timely resolution to protect Plaintiffs' constitutional rights.

Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2024, I electronically filed the foregoing Notice of Pending Motions with the Clerk of Court via the Court's CM/ECF system, which effects service upon all counsel of record.

Respectfully submitted,

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